

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FREDERICK M DETWILER,

Plaintiff,

v.

PIERCE COUNTY SHERIFF'S
DEPARTMENT, JUDY SNOW, PAT,
PIERCE COUNTY, AND PAT CARNY,

Defendants.

CASE NO. C14-5251 BHS-JRC

ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL AND
REVIEWING THE FILE

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR1, MJR3 and MJR4.

Plaintiff seeks copies of his medical record (Dkt. 32). Plaintiff originally sought these records from a third party, Con Med (Dkt. 32). Defendants have responded to the motion stating that they are the custodian of the records and that they have provided plaintiff with the documents he sought (Dkt. 37). Defendants also argue the motion is premature because the Court has not entered a minute order regarding discovery (Dkt. 32).

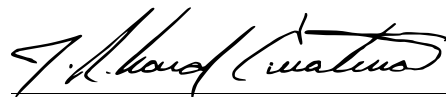
Plaintiff is a pro se inmate and this action is exempt from the initial discovery requirements of Fed. R. Civ. P. 26. *See*, Fed. R. Civ. P. 26(a)(1)(B)(iv). The Court does not enter scheduling orders or discovery orders on action of this nature until an answer is filed.

1 Discovery is open and available once the action is filed. Defendants cite to *Harlow v Fitzgerald*
2 as support for their argument that discovery is premature (Dkt. 37). *Harlow v. Fitzgerald*, 457,
3 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). *Harlow* addresses qualified immunity.
4 Because qualified immunity is an affirmative defense it must be raised by the defendants.
5 *Harlow v. Fitzgerald*, 457, U.S. 800, 815 (1982). Defendants did not raise qualified immunity in
6 their motion to dismiss (Dkt. 21). Plaintiff's motion is not premature.

7 Plaintiff's motion to compel is denied because defendants state that plaintiff has the
8 documents he sought (Dkt. 37). The Court's review of the file discloses that plaintiff withdrew
9 his motion to dismiss the action (Dkt. 31 withdrawing Dkt. 28). Thus, the only pending motion
10 is defendants' motion to dismiss (Dkt. 21). Defendants' motion to dismiss is ripe for review and
11 will be addressed in a separate Report and Recommendation.

12 The Clerk's office is directed to remove Dkt. 28 and 32 from the Court's calendar and
13 send plaintiff a copy of this order.

14 Dated this 28th day of October, 2014.

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17 J. Richard Creatura
18 United States Magistrate Judge
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